

1 Larry R. Laycock  
2 Charles J. Veverka  
3 Robert A. Aycock  
4 Mark W. Ford  
5 WORKMAN | NYDEGGER  
6 1000 Eagle Gate Tower  
7 60 East South Temple  
8 Salt Lake City, UT 84111  
9 Telephone: (801) 533-9800

10 William S. Farmer (State Bar No. 46694)  
11 Jacob Alpren (State Bar No. 235713)  
12 COLLETTE ERICKSON FARMER & O'NEILL LLP  
13 235 Pine Street, Suite 1300  
14 San Francisco, CA 94104  
15 Telephone: (415) 788-4646

16 Attorneys for Defendant  
17 PODFITNESS, INC.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 15 APPLE COMPUTER, INC.,

22 Plaintiff,

23 v.  
24 18 PODFITNESS, INC., and DOES 1-100,  
25 inclusive

26 Defendants.

27 Civil Action No. 4:06-cv-05805 SBA

28 **PODFITNESS' REPLY TO APPLE'S  
OPPOSITION TO PODFITNESS'  
MOTION TO STAY PROCEEDINGS FOR  
THIRTY DAYS PENDING  
ENGAGEMENT  
OF SUBSTITUTE COUNSEL**

Date: \_\_\_\_\_, 2007  
Time: 1:00 pm  
Judge: Hon. Saundra B. Armstrong

29  
30 Defendant Podfitness, Inc. ("Podfitness") hereby submits this reply to plaintiff Apple  
31 Computer, Inc.'s ("Apple's") Opposition to Podfitness' Motion to Stay Proceedings for Thirty  
32 Days Pending Engagement of Substitute Counsel ("Opposition").

33 In support of its Opposition, Apple relies upon the presence of and involvement by  
34 Steven R. Hutchinson ("Mr. Hutchinson") as in-house counsel for Podfitness. It is Apple's  
35 position that Mr. Hutchinson would be competent to represent Podfitness, obviating the need of a  
36

1 temporary stay of proceedings. Since Apple's opposition, these circumstances have changed.  
2 On October 15, 2007 Mr. Hutchinson resigned as in-house counsel for Podfitness, with his  
3 resignation effective immediately. (Declaration of Jeff Hays ("Hays decl."), filed concurrently  
4 herewith, ¶ 3). Mr. Hutchinson's departure has made the additional time needed to locate and  
5 engage substitute counsel even more critical.

6 As of the date of his departure, Mr. Hutchinson had failed to locate and/or retain  
7 substitute counsel. (Hays decl., ¶ 4). Podfitness must now find and educate substitute counsel to  
8 represent Podfitness. Jeff Hays, President of Podfitness, has undertaken the task of doing so.  
9 (Hays decl., ¶ 2, 5). However, because the location and engagement of substitute counsel was  
10 the sole responsibility of Mr. Hutchinson, upon Mr. Hutchinson's resignation, Mr. Hays was  
11 forced to begin the search for substitute counsel from square one. (Hays decl., ¶ 6). Even more  
12 importantly, once found and retained, educating substitute counsel is a task that will take more  
13 time now that Podfitness is without in-house counsel present to facilitate the transition. (Hays  
14 decl., ¶ 7).

15 Based on the foregoing, Podfitness seeks the thirty-day stay of this action.

16 DATED: October 22, 2007

17 Respectfully submitted,

18 WORKMAN | NYDEGGER

19 /s/ Charles J. Veverka  
20 Charles J. Veverka  
21 Robert A. Aycock  
22 Mark W. Ford  
23 1000 Eagle Gate Tower  
24 60 East South Temple  
25 Salt Lake City, UT 84111  
26 Telephone: (801) 533-9800

27 William S. Farmer  
28 Jacob Alpren  
COLLETTE ERICKSON FARMER & O'NEILL LLP  
235 Pine Street, Suite 1300  
San Francisco, CA 94104  
Telephone: (415) 788-4646

29 Attorneys for Defendant Podfitness, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David J. Miclean  
**FISH & RICHARDSON P.C.**  
500 Arguello Street, Suite 500  
Redwood City, California 94063

Lisa M. Martens  
**FISH & RICHARDSON P.C.**  
12390 El Camino Real  
San Diego, California 92130

## WORKMAN NYDEGGER

/s/ C.J. Veverka  
STERLING A. BRENNAN  
**WORKMAN NYDEGGER**  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111  
Telephone: (801) 533-9800